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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Involuntary Termination of the)
Parent-Child Relationship of E.S., K.S. and R.S.,)
Minor Children, and their Mother,)

RENA SMITH,)

Appellant-Respondent,)

vs.)

No. 49A02-0701-JV-87

MARION COUNTY OFFICE OF)
FAMILY AND CHILDREN,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Appellee-Guardian Ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Pro Tempore
Cause No. 49D09-0605-JT-18369, 49D09-0610-JT-14236 & 49D09-0610-JT-41696

July 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPBACK, Judge

Rena Smith (“Mother”) appeals the trial court’s termination of her parental rights to K.S., R.S., and E.S.¹ Mother raises one issue, which we revise and restate as whether the trial court’s order terminating Mother’s parental rights to K.S., R.S., and E.S. is clearly erroneous. We affirm.

The relevant facts follow. On December 25, 2004, the police were called to Mother’s home because of a domestic dispute. The police found the home to have unsatisfactory conditions and arrested Mother for assault on her boyfriend. Mother had been heating the house with the oven and did not have the heat turned on because she had an outstanding bill. The Marion County Department of Child Services (“MCDCS”) removed K.S., born on April 5, 1999, and R.S., born on November 12, 2000, from the home. On December 28, 2004, the MCDCS filed a petition alleging that K.S. and R.S. were children in need of services (“CHINS”). The petition alleged:

* * * * *

5. The children are Children In Need of Services as defined in IC 31-34-1 in that: one or more of the children’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply one or more of the children with necessary food, clothing, shelter, medical care, education or supervision; and the children need care, treatment or rehabilitation that the children are not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court, as shown by the following, to wit:

¹ Jeremiah Edmonson aka Jeremiah Battles is the alleged father of K.S. Jeffrey Rush is the alleged father of R.S. Eon Truth is the alleged father of E.S. and is deceased. The alleged fathers do not appeal the termination of their parental rights.

- A) On or about December 25, 2004, the Marion County Office of Family and Children (MCOFC) determined, by its Family Casemanager (FCM) Wendy Taylor, these children to be children in need of services because their mother and sole legal, custodian, Rena Smith, has failed to provide them with an appropriate home free of drug usage and domestic violence. [Mother] uses crack cocaine and was recently arrested for engaging in a physical altercation with her live-in boyfriend. Additionally, the family home did not contain food, had dirty clothing and dishes throughout and was being heated by the kitchen stove.

* * * * *

Petitioner's Exhibit 3.

On February 17, 2005, the trial court determined that K.S. and R.S. were CHINS and ordered that the K.S. and R.S. remain in foster care. The trial court also entered a participation decree, which required Mother to notify the caseworker of changes in address or household composition within five days of a change, contact the caseworker every week to allow the caseworker to monitor compliance with the court's orders, secure and maintain a legal and stable source of income adequate to support all household members, obtain and maintain suitable housing, successfully complete a home based counseling program with the children and successfully complete any recommendations of the counselor, complete a parenting assessment and successfully complete all recommendations developed as a result of the parenting assessment, successfully complete a drug and alcohol assessment and successfully complete all recommendations made by the evaluations including intensive outpatient treatment or inpatient treatment, establish paternity as to K.S., and reimburse the Marion County Office of Family and

Children expenses for the out of home placement and/or services to the children in the amount of twenty dollars per week beginning March 25, 2005.

Mother successfully completed a parenting assessment and parenting classes. Mother completed a drug and alcohol assessment, which recommended that Mother complete an intensive outpatient program. On January 10, 2005, Mother was first referred for intensive outpatient treatment, and Mother failed to successfully complete this referral. On February 1, 2005, the MCDACS made a second referral for an intensive outpatient program, which Mother successfully completed approximately sixteen weeks later. Between January 5, 2005, and April 12, 2005, Mother missed nine scheduled drug screens and performed five drug screens, four of which were positive for marijuana. The referral with the drug screening agency closed on April 12, 2005, due to Mother's lack of participation.

In August 2005, the MCDACS again referred Mother for drug screening. The drug screening agency informed Mother that it was using a "call in system" and Mother was expected to call daily and the agency would inform her whether she needed to submit a drug screen that day. Transcript at 12. From August until November 2006, Mother was scheduled to participate in sixty-six drug screens. Mother only completed fourteen drug screens and three were positive for marijuana and one was positive for marijuana and cocaine. In September 2005, Mother completed an anger management evaluation and anger management classes.

On August 29, 2005, the MCDACS referred Mother for home based counseling because Mother was pregnant with E.S., who was born on October 7, 2005. On October

24, 2005, the MCDCS filed a petition alleging that E.S. was a CHINS. The petition alleged:

* * * * *

5. [E.S. is a Child] in Need of Services as defined in IC 31-34-1 in that: one or more of the [child]'s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply one or more of the children with necessary food, clothing, shelter, medical care, education or supervision; and the [child] need care, treatment or rehabilitation that the [child is] not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court, as shown by the following, to wit:
 - A) On or about October 20, 2005, the Marion County Office of Family and Children (DCS) determined, by its Family Case Manager (FCM) Dale Reynolds, this child to be a child in need of services because [Mother] . . . has not completed the rehabilitative services required in order to have her older children, who are currently wards of MCDCS, returned to her care. The older children were removed from [Mother] due to neglect, and [Mother] has yet to complete home based counseling and recommendations. Therefore, the child would be endangered in the care of [Mother] without the coercive intervention of the Court[.]

* * * * *

Petitioner's Exhibit 12. The MCDCS sought an "in home CHINS" and left E.S. in the home. Transcript at 102. The trial court entered a participation decree, which required Mother to contact her caseworker, secure and maintain a legal and stable source of income, obtain suitable housing, successfully complete a home based counseling program, submit to random drug testing, and comply with all court orders from the CHINS proceeding involving K.S. and R.S.

At the time home based counseling began, Mother received social security income for herself and K.S. and she “did friends['] hair on the side.” Transcript at 51. Kelly Guidry, Mother’s home based case manager, informed Mother that she would have to meet with Guidry weekly and outlined the treatment plan. The treatment plan required Mother to maintain a safe and clean home, remain drug free, work on a budget, work on getting her GED, file for child support, establish paternity for her new baby, and work on anger management. The treatment plan also mentioned that Mother wanted to start earning money by doing hair.

At some point, Mother moved in with her aunt and the MCDACS did not have any background checks on Mother’s aunt. The family case manager told Mother that anyone living in the home would have to submit to background checks. Mother told the family case manager that she would get the information needed to run background checks but Mother never provided the information.

During one of the visits by the family case manager to Mother’s home, the heat was on but the oven was also on and the oven door was open allowing heat into the home, which was a problem due to E.S. “being as young as she was.” Transcript at 47. There were other people in Mother’s home on several occasions, including one time when there were fifteen people in Mother’s home.

On March 14, 2006, E.S. was removed from the home because Mother failed to provide information to the MCDACS to run background checks on the people living in Mother’s home, Mother failed to submit to random urine screens, and Mother failed to provide proof that she was paying her bills and the MCDACS was concerned that the heat

was not on in Mother's house. On May 4, 2006, the MCDCS filed a petition to involuntarily terminate Mother's parental rights to K.S. and R.S.

Guidry worked with Mother for ten months, and Mother failed to meet with her weekly, acquire her GED, take classes that would allow her to do hair, and file for child support. Mother completed a budget, but there was still "some issue with money." Transcript at 25. Mother also failed to complete weekly drug screens. Guidry told Mother that if she did not have a ride to get to the drug screen she should call Guidry and she would take her, but Mother never called Guidry for a ride. The MCDCS gave Mother bus tickets when she requested them, but Mother still failed to attend the random drug screens as scheduled.

Mother never provided proof that her bills were being paid and that she was following her budget and failed to establish that she had an adequate income to support the children. Mother never submitted twenty dollars per week to the MCDCS. Mother did not provide a copy of the lease to the family case manager. On June 16, 2006, Mother's referral for the home based program was closed unsuccessfully after ten months because Mother tested positive for marijuana and cocaine.

In September 2006, Mother was referred for a third time for drug treatment in an intensive outpatient group. The goal of the treatment plan was for Mother to attend twenty-four sessions of intensive outpatient treatment three times per week for eight weeks and attend alcoholics anonymous or narcotics anonymous meetings and then obtain eight weeks of "[a]fter care." Transcript at 75. In September 2006, Mother was scheduled to attend nine meetings and missed one meeting. In October 2006, Mother was

scheduled to attend thirteen meetings and missed four meetings and failed to call the treatment facility one of those times. That same month, the MCDCS filed a petition to involuntarily terminate Mother's parental rights to E.S.

In November 2006, Mother was scheduled to attend seven meetings and attended only two meetings. Mother went "back into denial in regards to . . . how alcohol and marijuana and drugs affect her life." Transcript at 70. Mother failed to attend alcoholics anonymous or narcotics anonymous meetings. On November 7, 2006, Mother tested positive for marijuana.

On November 15, 2006, and December 7, 2006, the trial court held a termination hearing. The trial court granted the petitions to terminate Mother's parental rights and entered the following findings of fact and conclusions thereon:

FINDINGS OF FACT

The Court finds the following by clear and convincing evidence:

1. [Mother] is the mother of [K.S.], [R.S.], and [E.S.] whose respective birthdates are: April 5th, 1999, November 12th, 2000, and October 7th, 2005. [Mother] has no other children and is not currently pregnant.
2. [K.S.], [R.S.], and [E.S.] are the current subjects of CHINS, Child In Need of Services, actions under cause numbers 49D09-0412-JC-001871, 49D09-0412-JC-001872, and 49D09-0510-JC-041652.
3. Jeremiah Battles aka Jeremiah Edmonson is the only alleged father of [K.S.].
4. Jeffrey Rush is the only alleged father of [R.S.].
5. Eon Truth is the only alleged father of [E.S.].

6. Eon Truth is deceased, his death certificate indicates that he expired on August 30th, 2005, prior to the birth of his alleged child, [E.S.].
7. Jeffrey Rush has never contacted the [MCDCS] regarding [R.S.]. Mr. Rush has not established legal paternity, does not pay child support and has shown no interest in appropriately parenting [R.S.]. He was defaulted in the CHINS action on April 28th, 2005, at which time [R.S.] was removed from his care and custody pursuant to a dispositional decree entered by the court.
8. Jeremiah Battles, aka Jeremiah Edmonson, initially appeared in the CHINS action, and [K.S.] was adjudicated to be a child in need of services as to Mr. Battles/Edmonson following a fact finding hearing on February 17th, 2005. A disposition hearing was held on March 24th, 2005, at which time [K.S.] was removed from the care and custody of Battles/Edmonson pursuant to a dispositional decree of the court and Mr. Battles/Edmonson was ordered in a Parental Participation Decree to complete services to enhance his ability to safely and appropriately parent [K.S.].
9. Mr. Battles aka Edmonson completed a parenting assessment soon after the initial CHINS was filed and then disappeared. He has had no contact with the Department of Child Services or his alleged child since early in 2005.
10. The CHINS petition was filed in the Marion Superior Court, Juvenile Division, by the MCDCS as to [K.S.] and [R.S.] because [Mother] . . . failed to provide her children with an appropriate home free of drug usage and domestic violence. [Mother] used crack cocaine and had been recently arrested for engaging in a physical altercation with her live-in boyfriend. The family home did not contain food, had dirty clothing and dishes strewn throughout and was being heated by the kitchen stove. At the time the petition was filed, neither of the alleged fathers, Jeffrey Rush nor Jeremiah Battles/Edmonson, had come forward to demonstrate to the [MCDCS] the ability or willingness to appropriately parent their alleged children. Current whereabouts/addresses for the two alleged fathers were unknown.
11. Following a trial, the Court found the allegations contained in the CHINS petition to be true and [K.S.] and [R.S.] were adjudicated to be CHINS, Children In Need of Services, as to [Mother] on February 17th, 2005.

12. A dispositional decree was entered by the court on March 24th, 2005 removing the children, [K.S.] and [R.S.], from the care, custody and control of [Mother]. At the same time, the court entered a participation decree ordering [Mother] to complete certain services to enhance her ability as a parent and facilitate reunification with her children.
13. [K.S.] and [R.S.] have been in foster care continuously for the duration of this case. They have not been returned to the care and custody of [Mother]; therefore, [K.S.] and [R.S.] have been removed from the care of [Mother] pursuant to the terms of a dispositional decree for more than six (6) months.
14. There is a reasonable probability that the conditions which resulted in the removal of the children and the reasons for their continued placement outside of [Mother]'s care will not be remedied, and that continuation of the parent-child relationship poses a threat to the well-being of [K.S.] and [R.S.].
15. [Mother] was ordered to complete an array of services including: contacting the caseworker weekly, participate in a program of home based counseling and successfully complete it and any recommendations of the home based counselor, undergo a parenting assessment and follow all recommendations of the parenting assessor, complete a substance abuse evaluation and follow all recommendations stemming from that assessment, successfully complete a program of anger management, demonstrate that she had secured and could maintain a legal, stable source of income adequate to support herself and her children, demonstrate that she had obtained and could maintain suitable housing with functional utilities and adequate provisions for herself and her children, establish legal paternity of [K.S.] and [R.S.] (if possible) and visit her children on a consistent basis. [Mother] was also ordered to reimburse the MCDACS \$20 per week for the expense of the out of home placement during the duration of this case.
16. Initially, [Mother] was compliant with court ordered services. She completed a parenting assessment and a substance abuse evaluation in a timely manner.

17. [Mother]'s parenting assessment recommended that she complete intensive outpatient drug treatment and random urine screens to ensure that she was remaining drug free.
18. [Mother] was referred for drug screens at Vallee Vista Health Services on January 5th, 2005. Ms. Smith submitted a total of five (5) screens. Four (4) of those screens were positive for marijuana; one of those screens was negative for all substances. [Mother] missed nine (9) screens.
19. Vallee Vista closed [Mother]'s referral on April 12th, 2005 for lack of participation, per their policy of closing referrals with 60 days of inactivity.
20. On August 2nd, 2005 Vallee Vista received a second referral for [Mother] to submit random drug screens through their facility. Since that referral has been opened, [Mother] has been scheduled to submit sixty-six (66) random urine screens. She has submitted only fourteen (14) screens. Of these fourteen, three (3) were positive for marijuana, 8/2/06, 8/7/06, and 8/17/06 and one (1) was positive for both marijuana and cocaine 6/6/06.
21. In March of 2005 Vallee Vista began utilizing a call in system where clients call in on a daily basis and are told whether they need to appear and submit a drop that day, so the burden is on the parent to initiate his/her service.
22. Despite her lack of consistent participation, Vallee Vista has not closed out [Mother]'s current referral because, per their policy, they do not close a referral once a case is in termination unless directed to do so by the Family Case Manager. Therefore, [Mother] has had the ability to participate in court ordered random urine screens, but she has elected not to do so.
23. On January 10th, 2005, [Mother]'s family case manager referred her for intensive outpatient drug treatment. That program was not successfully completed.
24. On February 1st, 2005, [Mother]'s family case manager again referred her for intensive outpatient drug treatment. [Mother] graduated from this program.

25. [Mother] was referred for an anger management evaluation and completed said evaluation on February 21st, 2005.
26. [Mother] was referred for anger management classes on March 9th, 2005. [Mother] promptly began classes, but her attendance lapsed over the summer. She did manage to complete the sixteen week anger management course on September 7th, 2005.
27. Due to [Mother]'s participation in services late in the summer/early fall of 2005 and the imminent birth of [E.S.], homebased counseling was referred for [Mother] on August 29th, of 2005 to assist [Mother] and provide her extra support for the birth of [E.S.].
28. [E.S.] was born on October 7th, 2005. On or about October 24th, 2005, MCDCS filed a CHINS petition with regard to [E.S.].
29. On October 24th, 2005, [Mother] admitted that [E.S.] was a Child In Need of Services and the child was removed from her care, custody and control pursuant to a dispositional decree entered by the court, although the court placed [E.S.] in [Mother]'s care as an in-home CHINS.
30. At the initial hearing on October 24th, 2005, [Mother] informed the court that the alleged father of this child, Eon Truth, was deceased.
31. Also at this initial hearing, [Mother] waived her right to a pre-dispositional report, and the court entered a participation decree for [Mother] again ordering her to complete services to enhance her abilities as a parent.
32. On October 24th, 2005, [Mother] was ordered to: contact the caseworker weekly, participate in a program of home based counseling and successfully complete it and any recommendations of the home based counselor, demonstrate that she had secured and could maintain a legal, stable source of income adequate to support herself and her children, demonstrate that she had obtained and could maintain suitable housing with functional utilities and adequate provisions for herself and her children, submit to random drug testing, visit her children on a consistent basis, and comply with all orders of the court regarding the CHINS cases for [K.S.] and [R.S.].

33. [Mother]'s homebased program identified the following goals for [Mother] to work toward and accomplish: complete scheduled drug screens and remain drug free, meet with the homebased counselor weekly, work toward her GED, work on anger management [despite [Mother] completing her anger management program on 9/7/05],² take classes toward getting licensure to do hair, get herself on WIC, establish and follow a budget, and file for child support.
34. Homebased counseling worked continuously with [Mother] for ten (10) months. [Mother] never took a single class toward getting her GED. [Mother] did not consistently meet with her homebased counselor on a weekly basis. [Mother] took no classes to get licensed as a beautician. [Mother] took no steps to secure child support for any of her children. [Mother] did work on a budget, but there were still money issues that were unresolved.
35. [Mother] claimed that lack of transportation was the reason she was unable to comply with services. The court finds that [Mother]'s testimony lacks credibility.
36. [Mother]'s homebased case manager, Kelly Guidry, made numerous standing offers to [Mother] to provide her with transportation to her drug screens; all [Mother] need do was call her. [Mother] never called Ms. Guidry to request a ride. [Mother] never called her family case manager and requested a ride to any of her services.
37. MCDCS can provide 20 bus tickets per month, within a few days, at the request of the parent. [Mother] was provided 20 bus tickets each time she asked for them. She did not ask on a regular basis. [Mother], herself, testified that she always had the means to purchase bus tickets or passes when she needed them.
38. During the time period that home based was in place, [Mother] was reporting to her home based counselor that she was consistently taking her random urine screens and that they were all negative, which was simply not true.
39. During the time that home based counseling was in place, the home based counselor frequently noticed numerous, unidentified people, approximately fifteen (15) on one occasion, loitering in [Mother]'s

² Bracketed text appears in original.

home. Home based was present to work directly with [Mother] and her children.

40. The home based counselor was responsible for arranging the visitation between [Mother] and [K.S.] and [R.S.] and supervising that visitation during that phase of the case. Due to her initial compliance with services and progress, home based recommended that [Mother] have unsupervised visitation with [K.S.] and [R.S.], but [Mother]'s failure to comply with court ordered drug screens and failure to submit information about the people with whom she was residing concerned the home based counselor, therefore Mother's visitation went back to being supervised in April 2006.
41. In March of 2006, [E.S.] was removed from the physical care of [Mother] due to her failure to comply with court ordered drug screens, to submit information about the people with whom she was residing and for failure to submit her full budget information to DCS, all of which endangered [E.S.] in [Mother]'s care. Therefore, [E.S.] has been removed from the physical care and custody of [Mother] for more than six months pursuant to an order of the court.
42. Home based counseling closed out unsuccessfully in June 2006 when they learned [Mother] had tested positive on June 6th, 2006 for marijuana and cocaine.
43. MCDCS re-referred [Mother] for intensive outpatient (IOP) drug treatment due to her relapse and failure to benefit from her previous IOP course.
44. On September 7th, 2006, [Mother] attended the intake session at Family Works for intensive outpatient drug treatment, and began the program on September 12th, 2006. The Family Works program meets three (3) times per week for an eight (8) week period and then one (1) time per week for eight (8) weeks. The program also requires that the client attend AA (alcoholics anonymous) or NA (narcotics anonymous) simultaneously with the first eight weeks of their program. The goal they set is for the client to attend 24 sessions of AA or NA in that time period, approximately three (3) sessions per week.
45. As of November 15th, 2006, [Mother] had missed one scheduled session at Family Works in September and four scheduled sessions

in October and had not attended a single AA or NA session. She has since attended 5 meetings.

46. As of November 7th, 2006, [Mother] tested positive for marijuana at a level of 212, indicating recent use and another relapse. Ms. Julie Lisek, [Mother]'s counselor and substance abuse therapist, testified as a qualified expert. In her expert opinion, [Mother]'s conduct in using illegal drugs again and choosing to associate with people who use illegal drugs reflects that [Mother] has reverted to a state of denial about the seriousness of using illegal drugs.
47. At the time of trial, the prognosis for [Mother]'s recovery is guarded due to the number of relapses she has had over the approximate two year duration of this case because there is a correlation between the number of times a parent relapses/uses while trying to maintain sobriety and successful recovery. The more relapses a client has, the less likely he/she is to recover from addiction.
48. [Mother] has not visited with her children since the court in the CHINS matter suspended her visitation on May 4th, 2006. At that time, the court suspended [Mother]'s visitation until she was able to provide four (4) consecutive negative drug screens. Although it was within her power to do so, [Mother] has never done this.
49. [Mother] has never assumed any financial responsibility for her children since they were made wards of the state; she has never paid any monies to reimburse the Department of Child Services for the out of home care provided, as ordered by the CHINS court on March 24th, 2005.
50. [Mother] has never provided to DCS and documentation demonstrating proof of a stable, legal income sufficient to support herself and her children, although it has been requested numerous times. [Mother] has never produced a lease or any other documentation demonstrating proof of appropriate, stable housing adequate for herself and her children, although it has been requested numerous times.
51. [Mother] has lived in at least four (4) different residences since the initial CHINS action was filed.
52. The children are at serious risk of neglect in the care of [Mother] due to her ongoing, continued use of illegal drugs and her inability to

demonstrate the ability to meet their basic needs on a long term and consistent basis. Mother has not completed IOP as yet and even if she does not relapse again, she will still have to complete the program into 2007 and then begin home-based. It is simply not fair nor in the children's best interests to continue to delay permanency for them while [Mother] attempts to stop using drugs.

53. [K.S.] and [R.S.] have resided with their sibling in the same foster home since June 2006. [E.S.] was placed first in the home May 2006 and has continuously resided in that home since placement.
54. The foster/adoptive home is very loving, these three children are the only children in their home, and they are committed to adopting them and providing a safe, stable, permanent home for them until they reach adulthood. The children are all thriving.
55. The plan that DCS has for these children is that they be adopted by the current foster placement. This is a satisfactory plan for these children.
56. Given the children's need for permanency and a stable, loving home and [Mother]'s lack of demonstrated ability to provide for those needs, it is in the children's best interest to terminate the parent-child relationship.
57. The Guardian ad Litem for the children believes that termination of the parent-child relationship and adoption is in the children's best interest.
58. [Mother] has had approximately two years to complete the services that would demonstrate that she is clean, drug free and can maintain that sobriety, provide a stable, appropriate home for her children and care for them properly. Additional time for her to complete services is not warranted and would pose a risk of harm to the children.
59. Notice of today's proceedings was provided to Jeremiah Battles aka Edmonson and Jeffrey Rush via publication in a newspaper of general circulation. That publication has expired, and neither man has appeared to assert his parental rights nor caused an appearance to be filed on his behalf.

60. Neither Jeffrey Rush nor Jeremiah Battles aka Edmonson has ever demonstrated a desire or willingness to appropriately parent his alleged child.
61. The parent-child relationship as to [Mother], Jeremiah Battles aka Edmonson, and Jeffrey Rush and their respective children/alleged children must be severed to allow [K.S.] and [R.S.] to fully bond with their foster family and for all of the children to move on with their lives in a stable, loving, permanent home.

CONCLUSIONS OF LAW

1. [K.S.], [R.S.] and [E.S.] were found to be Children in Need of Services by Order of the Marion County Superior Court, Juvenile Division.
2. The children have been removed from [Mother], Jeffrey Rush and Jeremiah Battles aka Edmonson under the terms of a dispositional decree for more than six months.
3. There is a reasonable probability that the conditions that resulted in the children's removal from and continued placement outside the care and custody of [Mother], Mr. Rush and Mr. Battles aka Edmonson will not be remedied.
4. There is a reasonable probability that continuation of the parent-child relationship between the children and [Mother], and their alleged fathers Jeffrey Rush and Jeremiah Battles/Edmonson, poses a threat to the well-being of the children.
5. Termination of the parent-child relationship between the children and their mother and their alleged fathers, Mr. Rush and Mr. Battles aka Edmonson, is in the children's best interests.
6. The plan of the [MCDCS] for the care and treatment of the children if the parent-child relationship is terminated is adoption and that plan is acceptable and satisfactory.
7. If any of the foregoing Conclusions of Law should more properly be denominated as Findings of Fact, then they are so denominated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the parent-child relationship between [K.S.], [R.S.] and [E.S.], minor children, and [Mother] and their alleged fathers, Jeffrey Rush and Jeremiah Battles aka Edmonson, is hereby permanently terminated together with all rights, powers, privileges, immunities, and duties, including rights to custody, control, and visitation and obligation to pay child support. Their consent to adoption is not required.

* * * * *

Appellant's Appendix at 8-17.

The issue is whether the trial court's order terminating Mother's parental rights to K.S., R.S., and E.S. is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), reh'g denied, trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court's judgment will be set aside only if they are clearly erroneous. Id. "A judgment is clearly erroneous if

the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) (2004) provides that “if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Services, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

Mother challenges the trial court's findings that: (A) the continuation of the parent-child relationship poses a threat to the well-being of E.S., K.S., and R.S.; and (B) the conditions that resulted in the removal of the children will not be remedied.

A. Conditions Will Not Be Remedied

Mother argues that the trial court's finding that the conditions that resulted in the children's removal were not likely to be remedied is clearly erroneous. Mother argues that she was in the final weeks of the intensive outpatient program and that she could complete the recommended treatment plan in January 2007. Mother also argues that her relapse was very common in the treatment program.

To determine whether the conditions that resulted in the Children's removal will be remedied, the trial court must look to Mother's fitness at the time of the termination proceeding. In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. Id. When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id. The trial court must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), reh'g denied, trans. denied. However, "[a]

termination of parental rights cannot be based entirely upon conditions which existed in the past, but which no longer exist.” In re T.C., 630 N.E.2d 1368, 1374 (Ind. Ct. App. 1994), reh’g denied, trans. denied. “A trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” In re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002).

The evidence presented at the hearing reveals that K.S. and R.S. were removed because of unsatisfactory conditions in Mother’s home. Mother had been heating the house with the oven and did not have the heat turned on. The home also did not contain food and had dirty clothing and dishes throughout. Further, Mother failed to provide a home free of drug usage. E.S. was removed from the home because Mother failed to submit to random drug screens, provide proof that she was paying her bills, or provide information to the MCDCS to run background checks on the people living in Mother’s home.

While Mother initially made appropriate steps, between January 5, 2005, and April 12, 2005, Mother missed nine scheduled drug screens and performed five drug screens, four of which were positive for marijuana. From August until the November 2006, Mother was scheduled to participate in sixty-six drug screens. Mother only completed fourteen drug screens and three were positive for marijuana and one was positive for marijuana and cocaine.

During one of the visits by the family case manager to Mother’s home, the heat was on but the oven was on and the oven door was open allowing heat into the home,

which was a problem due to E.S. “being as young as she was.” Transcript at 47. Mother never provided proof that her bills were being paid and that she was following her budget. Mother failed to establish that she had an adequate income to support the children. Mother did not provide a copy of the lease to the family case manager. On June 16, 2006, Mother’s referral for the home based program was closed unsuccessfully after ten months because Mother tested positive for marijuana and cocaine.

In September 2006, Mother was referred for a third time for drug treatment in an intensive outpatient group. In November 2006, Mother went “back into denial in regards to . . . how alcohol and marijuana and drugs affect her life.” Transcript at 70. Mother failed to attend alcoholics anonymous or narcotics anonymous meetings. On November 7, 2006, one week before the termination hearing and almost two years after the removal of K.S. and R.S., Mother tested positive for marijuana.

The trial court was permitted to judge Mother’s credibility and weigh the evidence of changed conditions against the testimony demonstrating Mother’s habitual patterns of conduct in failing to complete the required services. On appeal, we cannot reweigh the evidence or judge the credibility of the witnesses. We cannot say that the trial court’s finding there was a reasonable probability that the conditions that resulted in the children’s removal or placement outside the home would not be remedied is clearly erroneous. See, e.g., In re L.V.N., 799 N.E.2d at 68-71 (holding that mother’s arguments that the conditions had changed and she was now drug free constituted an invitation to reweigh the evidence); Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (holding that it was clear that the trial court gave

more weight to the abundant evidence on the mother's pattern of conduct in neglecting her children during the several years prior to the termination hearing than the mother's evidence that she had changed her life to better accommodate the children's needs).

B. Threat to the Well-Being of the Children

Mother also argues that the trial court erred by finding that Ind. Code § 31-35-2-4(b)(2)(B) required the MCDCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) the conditions that resulted in the children's removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the children. The trial court specifically found that the conditions that resulted in the children's removal or the reasons for placement outside the home will not be remedied and there is sufficient evidence in the record to support the trial court's conclusion. See supra Part A. Thus, we need not determine whether the trial court's conclusion that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

For the foregoing reasons, we affirm the trial court's involuntary termination of Mother's parental rights to K.S., R.S., and E.S.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur